BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TIMOTHY V. REICHENBERGER	)	
Claimant	)	
VS.	)	
	)	Docket No. 217,814
PIPING DESIGN SERVICES, INC. and	)	
LEARJET, INC.	)	
Respondents	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Liberty Mutual Insurance Company appeals from a preliminary hearing Order of September 30, 1997, wherein Administrative Law Judge Jon L. Frobish awarded benefits finding claimant had suffered accidental injury arising out of and in the course of his employment with Learjet, Inc.

ISSUES

Liberty Mutual Insurance Company seeks review of the Administrative Law Judge's finding on whether claimant met with personal injury by accident arising out of and in the course of his employment with respondent Learjet, Inc.

Claimant, in his brief, raises an issue as to whether Liberty Mutual Insurance Company has standing to appeal the Administrative Law Judge's Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds that a disputed issue of whether the injury arose out of and in the course of the claimant's employment is one of the issues enumerated in K.S.A. 44-534a, as amended, as appealable from a preliminary hearing order. As such, the issue is properly before this Appeals Board. Claimant disputes the standing of Liberty Mutual Insurance Company to bring this appeal because the Administrative Law Judge's Order "does not legally effect Piping Design Services in an adverse matter."

Liberty Mutual Insurance Company (Liberty Mutual) is the insurance carrier for respondent Piping Design Services, Inc. (Piping Design). In its Brief of Appellants, Liberty Mutual asserts that it is also the insurer of Learjet, Inc. (Learjet) under an alternate employer endorsement in its workers compensation insurance policy issued to Piping Design. Liberty Mutual further states that "the interests of Learjet, Inc. are being protected by Liberty Mutual Insurance Company which will be responsible for any benefits in this case to which the claimant may be entitled." K.S.A. 44-551, as amended, provides that any "interested party" may request review of an administrative law judge's order. Counsel for Learjet did not file a brief with the Appeals Board or otherwise make its position known. Based upon the above representation, the Appeals Board finds Liberty Mutual to be an interested party with standing to bring this appeal.

Claimant, an employee of Piping Design, was required to work at the Learjet plant facility. On September 16, 1996, he was injured while walking between the parking lot and the Learjet building where he regularly worked. The fall occurred as claimant was crossing a ditch on his way to the building to clock in and begin his work shift. The parties acknowledge that the parking lot was maintained and owned by Learjet. Claimant testified that the accident occurred while on a direct route from the parking lot to the time clock, a route normally used by both Learjet employees and by employees of Piping Design who were assigned to work at the Learjet plant. However, claimant admitted that the route he used took him off the improved or paved surface of the parking lot and sidewalk and onto the adjacent grassy area.

K.S.A. 1996 Supp. 44-501 and K.S.A. 44-508(g), as amended, make it the claimant's burden of proof to show, by a preponderance of the credible evidence, his right to an award by proving all of the various conditions upon which his recovery depends. *See* also Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

In previous orders, the Administrative Law Judge and the Appeals Board have both held that claimant was not injured while in the service of respondent Piping Design but instead occurred while he was on his way to assume the duties of his employment. As such, benefits were denied pursuant to K.S.A. 44-508(f), as amended, which states in pertinent part:

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties

> of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealing with the employer.

Thereafter, claimant amended his claim to include Learjet as a party respondent and the Administrative Law Judge awarded benefits against Learjet. Now Liberty Mutual, on behalf of Learjet, argues that the parking lot located on Learjet's premises, while owned and maintained by Learjet, should nevertheless not be treated as a part of Learjet's premises. It should be noted that although this parking lot is the only available route to or from work and is on a route not generally used by the public except in dealings with the employer, none of the parties allege it involved a special risk or hazard.

Both claimant and Liberty Mutual cite and rely upon the holding in Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 883 P.2d 768 (1994). In Thompson the claimant, while exiting from an elevator into a public hallway, fell and was injured. There were two offices off the hallway, one of which was the premises of the respondent employer of the claimant. Neither the claimant in Thompson, nor the claimant in this matter, argued that the employer's negligence was the proximate cause of the claimant's injury.

Thompson cites Larson's regarding the general "premises rules" with respect to parking lots:

> "As to parking lots owned by the employer, or maintained by the employer for his employees, practically all jurisdictions now consider them part of the 'premises,' whether within the main company premises or separated from it. This rule is by no means confined to parking lots owned, controlled, or maintained by the employer. The doctrine has been applied when the lot, although not owned by the employer, was exclusively used, or used with the owner's special permission, or just used, by the employees of the employer." 1 Larson's Workmen's Compensation Law § 15.42(a), permanent partial. 4-104 to 4-121; Thompson, *supra* at 42.

The Court in Thompson found it significant that there was no employer control to the right of ingress and egress between the elevator and the door of the office where claimant was injured. However, in this instance, Learjet had control over the parking and over the parking lot. Claimant testified this was the closest parking lot to the building where he clocked in but it appeared claimant was at liberty to use any available parking space in any location.

The rationale for the "going and coming" rule in K.S.A. 44-508(f), as amended, is that while "going and coming" to and from work the employee is only subject to the same risks or hazards as those to which the general public is subject. Those risks are not causally related to the employment. However, once the employee reaches the premises of the employer, the risks to which the employee is subjected have a causal connection to the employment. Therefore, an injury sustained on the premises is compensable even if the employee has not yet begun work. Thus, the "premises" rule is an exception to the "going and coming" rule. Thompson, *supra* at 46.

Liberty Mutual argues that because the area where claimant was injured was a drainage ditch adjacent to the parking lot and not on the paved surface, it should not be treated as Learjet's "premises." It is alleged that Learjet did not exercise the same degree of control and supervision over this "open field" as it did the paved surfaces. Furthermore, appellant contends "premises" is not synonymous with property or mere ownership. Nevertheless, although claimant could have reached his destination by staying on the paved surface, his shortcut across the ditch was not a substantial deviation as to remove him from the "premises" exception to the "going and coming" rule. The location where claimant was injured was still an area that respondent controlled. Furthermore, while it may not have been the safest route claimant could have taken, it was a direct route and claimant was at a place where an employee may reasonably be during the time he was there.

The Appeals Board finds claimant was injured while on the premises of Learjet. Therefore, his personal injury by accident did arise out of and in the course of his employment with Learjet and, as such, the Order of Administrative Law Judge Jon L. Frobish should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish of September 30, 1997, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

c: Kim R. Martens, Wichita, KS
Douglas D. Johnson, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director